



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2012-0891; FRL-9900-17-Region 5]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Wisconsin; Removal of Gasoline Vapor Recovery from Southeast  
Wisconsin**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a state implementation plan (SIP) revision submitted by the Wisconsin Department of Natural Resources on November 12, 2012, concerning the state's Stage II vapor recovery (Stage II) program in southeast Wisconsin. The revision removes Stage II requirements as a component of the Wisconsin ozone SIP. The submittal also includes a demonstration under section 110(l) of the Clean Air Act (CAA) that addresses emissions impacts associated with the removal of the program.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2012-0891. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Francisco J. Acevedo, Mobile Source Program Manager, at (312) 886-6061, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061, [acevedo.francisco@epa.gov](mailto:acevedo.francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is being addressed by this document?
- II. What comments did we receive on the proposed SIP revision?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

**I. What is being addressed by this document?**

On June 11, 2013, at 78 FR 34966, EPA proposed to remove the Stage II requirements under NR 420.045 of the Wisconsin Administrative Code from the state's Federally-approved SIP. The revision included copies of 2011 Wisconsin Act 196 enacted on April 2, 2012, authorizing the termination of Stage II requirements in Wisconsin; a summary of MOVES2010b modeling results and Wisconsin specific calculations based on EPA guidance used to calculate program benefits and demonstrate widespread use of onboard refueling vapor recovery systems in southeast Wisconsin; and a demonstration under section 110(1) of the CAA that includes offset emission credits.

## **II. What comments did we receive on the proposed SIP revision?**

EPA provided a 30 day review and comment period on the proposed action. The comment period closed on July 11, 2013. EPA received no adverse comments. EPA did however, receive one comment supporting EPA's approval of this revision. The commenter also requested that EPA "confirm and identify in the final approval whether Wisconsin intended to voluntarily use more emissions credits than necessary, and if so, identify the fact that the quantity of emission credits that were necessary to offset the shortfall were only those that were equal to the shortfall". EPA notes that nothing in the state's submittal or the proposal was intended to suggest that Wisconsin was using more emissions credits than were necessary to offset the stated

shortfall identified by Wisconsin. The column entitled "Difference (Shortfall-Credit)," presented in Table 3 of the proposal, highlights the amount of equivalent VOC emissions credits that remain available to Wisconsin after fully addressing the interim emissions shortfall from the removal of the Stage II program in southeast Wisconsin. They are intended to demonstrate that the available equivalent VOC emissions credits identified by the state are more than adequate to cover the interim Stage II shortfall.

### **III. What action is EPA taking?**

EPA is approving the revision to the Wisconsin ozone SIP submitted on November 12, 2012, concerning the Stage II program in southeast Wisconsin. EPA finds that the revision meets all applicable requirements and will not interfere with reasonable further progress or attainment of any of the national ambient air quality standards.

### **IV. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional

requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is

published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: July 31, 2013.

Susan Hedman,  
Regional Administrator, Region 5.



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by revising paragraphs (c)(69)(i)(A) and (c)(73)(i)(C), and by adding paragraph (c)(129) to read as follows:

**§ 52.2570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(69) \* \* \*

(i) \* \* \*

(A) Wisconsin Administrative Code, Chapter NR 420 Control of Organic Compound Emissions from Petroleum and Gasoline Sources; Section 420.02 Definitions, Sections NR 420.02(8m), (24m), (32m), (38m), (39m); Section NR 420.045 Motor Vehicle Refueling; published in Wisc. Admin. Code in January 1993, and took effect on February 1, 1993. Section NR 420.045 was rescinded in 2013 and is removed without replacement; see paragraph (c)(129) of this section.

\* \* \* \* \*

(73) \* \* \*

(i) \* \* \*

(C) Chapter NR 420: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM PETROLEUM AND GASOLINE SOURCES. NR 420.01 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March, 1, 1990. NR 420.02 and 420.045 as published in the (Wisconsin) Register, January, 1993, No. 445, effective February 1, 1993. NR 420.03 and 420.04 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 420.05 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. Section NR 420.045 was rescinded in 2013 and is removed without replacement; see paragraph (c)(129) of this section.

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(129) On November 12, 2012, the Wisconsin Department of Natural Resources submitted a request to remove Wisconsin's Stage II vapor recovery program requirements under NR 420.045 of the Wisconsin Administrative Code from the Wisconsin ozone State Implementation Plan.

(i) [Reserved]

(ii) Additional material. Wisconsin Statutes, section 285.31(5) Gasoline vapor recovery - Termination of Requirements, enacted on April 2, 2012, by 2011 Wisconsin Act 196.

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